MPTS Medical Practitioners Tribunal Service

Dr Benjamin SESSA (4438407)

DETERMINATION ON FACTS AND IMPAIRMENT – 01/03/2024

Background

1. Dr Sessa qualified in 1997 and, prior to the events which are the subject of the hearing, worked as a consultant psychiatrist in a number of NHS services including CAMHS. At the time of the events Dr Sessa was practising as a consultant psychiatrist in a number of roles and also in research. He was working: for a telemedicine company, Psychiatry UK; as a consultant addictions psychiatrist, AddAction; as a consultant psychiatrist in 'My Access Clinics' a medical cannabis prescribing service, and at Awakn Life Sciences Corporation. Dr Sessa was additionally Chief Medical Officer and Senior Research Development Officer at Awakn Life Sciences, the Principal Investigator in an alcoholism clinical trial, and Lead Therapist in a clinical trial for depression. Throughout the time of these events, Dr Sessa was also working in a private capacity providing 1:1 psychiatric management through Mandala Therapy Ltd, which subsequently became Dr Ben Sessa Ltd.

2. The allegation that has led to Dr Sessa's hearing can be summarised as engaging in a sexual relationship with Patient A, who had previously been a patient of Dr Sessa's and who was vulnerable due to a variety of mental health conditions, of which Dr Sessa was aware. It is further alleged that Dr Sessa consulted with Patient A in a pub, whilst she was drinking alcohol and also that he discharged Patient A from his care in order to pursue a sexual and/or emotional relationship with her.

3. The initial concerns were raised with the GMC on 10 November 2022 by Patient A's estranged husband.

The Allegation and the Doctor's Response

4. The Allegation made against Dr Sessa is as follows:

That being registered under the Medical Act 1983 (as amended):

1. Between January 2019 and March 2021, you had a doctor patient relationship with Patient A in the course of which you provided care and treatment to Patient A. Admitted and found proved.

2. On 27 August 2020 you consulted with Patient A:

   a. at a pub; Admitted and found proved.

   b. whilst she was drinking alcohol. Admitted and found proved.

3. On 31 March 2021 you discharged Patient A from your care in order to pursue a sexual and/or emotional relationship with her. Admitted and found proved.

4. Between in or around July 2021 and February 2022 you engaged in a sexual relationship with Patient A. Admitted and found proved.

5. At the time of your actions as described in paragraphs 2-4, you knew that Patient A was vulnerable by reason of the matters set out in Schedule 1. Admitted and found proved.

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct. To be determined.

The Admitted Facts

5. At the outset of these proceedings, through his counsel, Mr Brassington, Dr Sessa made admissions to the entirety of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

6. The Tribunal now has to decide, in accordance with Rule 17(2)(l) of the Rules, whether, on the basis of the facts which it has found proved as set out before, Dr Sessa's fitness to practise is impaired by reason of misconduct.

The Evidence

7. Dr Sessa provided his own witness statement, dated 11 December 2023 and also gave oral evidence at the hearing.

8. In his evidence, Dr Sessa told the Tribunal that Patient A had effectively been discharged from his care in August 2020 and that he knew of her psychiatric

history, including self-harm and deliberate overdoses, but said that he was not aware until hearing it during the GMC's opening that Patient A had attempted to take her own life during the course of their friendship/relationship. He told the Tribunal that Patient A had contacted him anonymously on Twitter in February 2021 and that after around 5 weeks of message communication he suggested that they meet. It was at this point that Patient A revealed herself to Dr Sessa.

9. Dr Sessa told the Tribunal that he consulted the GMC's guidance on relationships with patients, as well as with his indemnity provider, the MDDUS. He said that, although the guidance regarding current patients was crystal clear, it was less clear regarding former patients. Dr Sessa said that *'my heart overtook my head'*, that he cherry picked advice from MDDUS and interpreted the GMC guidance to justify him pursuing, at that time, a friendship with Patient A. Dr Sessa told the Tribunal that, despite objections from Patient A, he held a consultation with her in March 2021 to formally discharge her as his patient, which he described as a flawed appointment and an *'irritating complication'*, but that he thought at the time that this was the right thing to do.

10. Throughout his evidence, Dr Sessa repeated that he had made mistakes and had exercised poor judgement regarding Patient A. He said that, despite knowing her previous history, when he met Patient A in March 2021 and throughout their subsequent relationship, she gave no indication that she was still struggling with her previous health problems and appeared to be functioning well, strong, warm and stable. Dr Sessa said that, in March 2021, Patient A had not been his patient for seven months, which he had wrongly decided was sufficient time for their relationship to be on the *'right side of the guidelines'.*

11. Dr Sessa told the Tribunal that his judgement regarding Patient A had been wrong, that he wanted her to be well so he could pursue a relationship with her, so he therefore determined that she was well. He acknowledged that, as Patient A's former treating psychiatrist, there was *'a gross power imbalance in play, no matter how many times I said otherwise.'* He admitted that, by definition, he had exploited Patient A and abused his position, but that this was never a wilful attempt to exploit her. Dr Sessa told the Tribunal that Patient A was very persuasive and tried to convince him that their relationship was acceptable but that she wanted to tell friends that they had met on Twitter, not that Dr Sessa had been her doctor. He suggested that Patient A may have found it containing and felt safe by being in a relationship with her former psychiatrist.

12. Regarding the consultation in a pub on 20 August 2020, Dr Sessa said that this was not an ideal choice of location but, at the time, options were very limited

due to Covid-19. He said that the pub was a location known to both him and Patient A, that very few places were open and that it was raining heavily, therefore precluding meeting outside. Dr Sessa said that Patient A was already drinking one glass of wine before he arrived but did not appear intoxicated. He told the Tribunal that, with hindsight, he should have terminated the appointment immediately. However, he said that he made a judgement call that, on balance, it would be a greater loss to Patient A to cancel the appointment than to proceed. Dr Sessa told the Tribunal that he recognised that this was the wrong choice.

13. Dr Sessa told the Tribunal that over the course of three years he had lost his *'mother, father, my business and my partner.'* He outlined his efforts at remediation and told the Tribunal that *'grief is a lifelong process'*, which he will continue to live with and work through but that this did not mean that his fitness to practise remained impaired. He told the Tribunal that he sincerely regretted his actions and admitted his mistakes. He said he had suffered extreme distress and remorse at the loss of Patient A and that his part in the last year of her life was *'undoubtedly the greatest personal and professional mistake of my career.'* Dr Sessa told the Tribunal that he saw no possible chance of any repetition of his conduct and that he considered *'this chapter a tragic blip in my otherwise excellent career.'*

Documentary Evidence

14. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to the Record of Inquest into Patient A's death, the GP's report that was provided to the Inquest and evidence of Dr Sessa's efforts at remediation.

15. Additionally, the Tribunal received Dr Sessa's reflective statement, dated 1 February 2024, and a bundle of 360 feedback, testimonials, patient feedback and certificates from attendance at courses for the purpose of remediation.

Submissions

16. On behalf of the GMC, Mr Taylor, Counsel, submitted that all three limbs of the overarching objective applied in this case. He set out that impairment is a two stage process where the Tribunal must first determine if Dr Sessa's actions amounted to misconduct and then if his fitness to practise is currently impaired by reason of that misconduct. He submitted that, per the case of *Roylance v. The*

General Medical Council (Medical Act 1983) [1999] misconduct is a word of general effect and a matter of the Tribunal's judgement.

17. Mr Taylor referred the Tribunal to the case of *Remedy UK Ltd, R (on the application of) v The General Medical Council [2010] EWHC 1245 (Admin):*

> *'Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.'*

18. Mr Taylor submitted that both of these kinds of misconduct are present in this case. He submitted that Dr Sessa's conduct was in the exercise of his professional practice in that he discharged Patient A to pursue a relationship with her and that he consulted with her in a pub, whilst she was drinking alcohol. He said that this was particularly serious in light of Patient A's problems with alcohol. Mr Taylor also submitted that Dr Sessa engaging in a sexual relationship with a former patient would undoubtedly be seen as deplorable by fellow professionals.

19. Mr Taylor submitted that Dr Sessa had accepted that he abused his position as Patient A's psychiatrist. He said that this clearly amounted to serious professional misconduct.

20. Mr Taylor said that impairment was also a matter for the Tribunal's judgement. He referred the Tribunal to the cases of *General Medical Council v Meadow [2006] EWCA Civ 1390* and *Cohen v General Medical Council [2008] EWHC 581 (Admin)*, which he submitted set out that the purpose of the Tribunal is not to punish a practitioner but to protect the public and that the Tribunal must determine if Dr Sessa's conduct can be remedied, if it has been remediated and if it is likely to be repeated in the future.

21. Mr Taylor set out that the test for impairment is Dame Janet Smith's test in The Fifth Shipman Report, cited in *CHRE v NMC and P Grant [2011] EWHC 927 (Admin)*, the first three limbs of which were relevant in this case:

> *'a) Whether the registrant has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;*

b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;

c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

d) Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

22. Mr Taylor submitted that there are some forms of misconduct that are so serious that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made. Mr Taylor submitted that public confidence in the profession would be undermined if no impairment were found in such a serious case and with so tragic an outcome.

23. Mr Taylor submitted that Dr Sessa's misconduct does not lend itself to easy remediation, such as in cases of professional performance, so his efforts at remediation should carry less weight in the Tribunal's considerations. However, Mr Taylor acknowledged that Dr Sessa had completed various appropriate courses, had made full admissions and had expressed shock at his own behaviour.

24. Mr Taylor submitted that the Tribunal should consider paragraph 53 of Good Medical Practice (2014) ('GMP') and the guidance referred to therein, Maintaining a professional boundary between you and your patient ('The Guidance'). In particular, Mr Taylor referred the Tribunal to paragraphs 7 – 13 of The Guidance and submitted that Dr Sessa had breached these paragraphs.

25. Mr Taylor submitted that Dr Sessa's actions in breaching these paragraphs of The Guidance were a very serious departure from the standards of conduct expected of a doctor and that they required a finding of impairment.

26. On behalf of Dr Sessa, Mr Brassington, Counsel, submitted that there was little disagreement with Mr Taylor's submissions. He submitted that Dr Sessa's actions unquestionably amounted to misconduct and that his fitness to practise is therefore impaired.

27. Mr Brassington submitted that Dr Sessa had full insight into his wrongdoing, having made full admissions from the outset of proceedings that what he did

was entirely inappropriate. Mr Brassington submitted that Dr Sessa had never sought to avoid responsibility for his breaches of GMP or The Guidance and had been the primary source of the material before the Tribunal.

28. Mr Brassington submitted that he made no suggestion that Dr Sessa's fitness to practise was not impaired on the basis of the public interest. He said that Dr Sessa had previously acted in a way that put Patient A at risk of harm, brought the profession into disrepute and breached a fundamental tenet of the profession.

29. Mr Brassington submitted that Dr Sessa's conduct is remediable, despite it being in the category of behaviour that is more difficult to remediate. He submitted that Dr Sessa's reflective statement is particularly detailed and open, is brutally honest and self-critical. He submitted that Dr Sessa had analysed the decision making that was flawed. He convinced himself that his decision that he could pursue Patient A was a correct one because he had allowed his heart to rule his head. Mr Brassington submitted that Dr Sessa's remediation efforts were extraordinary and a proper and fair analysis would lead to the conclusion that he has remedied his deficiencies.

30. Mr Brassington submitted that, in the context of his CPD and reflections, it was a *'vanishing possibility'* that Dr Sessa would repeat his misconduct in the future. He reminded the Tribunal that ultimately, because of his own actions, Dr Sessa had lost his partner to suicide. Mr Brassington reminded the Tribunal that there was no suggestion from the GMC that Patient A's death was as a result of Dr Sessa's conduct.

31. Mr Brassington submitted that Dr Sessa did not seek to underplay the mistakes that he had made and took full responsibility for them all, having been honest and open throughout the hearing and offering repeated apologies. He submitted that the public would expect a finding that Dr Sessa's fitness to practise is currently impaired, but that this was because of his previous actions, not because of any future risk.

The Relevant Legal Principles

32. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

33. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct, and then whether the finding of that misconduct, which was serious, could lead to a finding of impairment.

34. The Tribunal must determine whether Dr Sessa's fitness to practise is impaired today, taking into account Dr Sessa's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

35. The Tribunal also had regard to the case of *Grant*, which set out the test above as well as:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

36. The Tribunal must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made.

The Tribunal's Determination on Impairment

Misconduct

37. The Tribunal considered that there were two principal areas of Dr Sessa's conduct that it must consider in relation to misconduct. Firstly, the consultation on 27 August 2020 in a pub and secondly the subject of Dr Sessa's personal relationship with Patient A.

38. Turning first to the consultation in a pub, the Tribunal considered that this clearly amounted to misconduct. It was not appropriate to hold a consultation with a patient who had problems with alcohol in a pub, particularly when she was drinking alcohol. However, the Tribunal was mindful of the circumstances at the time. August 2020 was a time of significant Covid-19 restrictions and many aspects of life, personal and professional, were being undertaken in new and sometimes less than ideal circumstances. The Tribunal bore in mind Dr Sessa's evidence that the pub was one of the few locations that were open at the time

of Patient A's appointment and that the weather prevented an outdoor consultation.

39. The Tribunal determined that, whilst Dr Sessa made the wrong decision in deciding to go ahead with the consultation, this was not so serious a failing as to amount to serious professional misconduct. The Tribunal considered that, whilst other professionals may have made a different decision, they would not consider Dr Sessa's actions deplorable under the circumstances.

40. The Tribunal then went on to consider if the circumstances of Dr Sessa's relationship with Patient A amounted to misconduct.

41. The Tribunal considered that it was a fundamental tenet of the profession that a doctor should not have an emotional/sexual relationship with a patient. Forming an emotional and/or sexual relationship with a former patient, is similarly discouraged, particularly for a psychiatrist per paragraph 12 of The Guidance. The Tribunal considered that this conduct would risk patient safety, damage the reputation of the profession and lower public confidence in the profession. The Tribunal noted that Mr Brassington had acknowledged this in his submissions.

42. The Tribunal turned to consider the relevant paragraph of GMP and The Guidance. Paragraph 53 of GMP states: *'You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.'* The Guidance then expands on this point as follows:

> *'7 You must not end a professional relationship with a patient solely to pursue a personal relationship with them.*
>
> *8 Personal relationships with former patients may also be inappropriate depending on factors such as:*
>
> *a the length of time since the professional relationship ended (see paragraphs 9–10)*
> *b the nature of the previous professional relationship*
> *c whether the patient was particularly vulnerable at the time of the professional relationship, and whether they are still vulnerable (see paragraphs 11–13)*
>
> *…*
>
> *You must consider these issues carefully before pursuing a personal relationship with a former patient.*

9 It is not possible to specify a length of time after which it would be acceptable to begin a relationship with a former patient. However, the more recently a professional relationship with a patient ended, the less likely it is that beginning a personal relationship with that patient would be appropriate.

10 The duration of the professional relationship may also be relevant. For example, a relationship with a former patient you treated over a number of years is more likely to be inappropriate than a relationship with a patient with whom you had a single consultation.

11 Some patients may be more vulnerable than others and the more vulnerable someone is, the more likely it is that having a relationship with them would be an abuse of power and your position as a doctor.

12 Pursuing a relationship with a former patient is more likely to be (or be seen to be) an abuse of your position if you are a psychiatrist or a paediatrician.

13 Whatever your specialty, you must not pursue a personal relationship with a former patient who is still vulnerable. If the former patient was vulnerable at the time that you treated them, but is no longer vulnerable, you should be satisfied that:

- *the patient's decisions and actions are not influenced by the previous relationship between you*
- *you are not (and could not be seen to be) abusing your professional position.'*

43. The Tribunal considered that all of these paragraphs were relevant in this case and that Dr Sessa had breached them all. The March 2021 consultation was in breach of paragraph 7, which was admitted by Dr Sessa. The Tribunal considered that 7 months was a short length of time since Patient A had been treated by Dr Sessa and that the nature of her relationship with Dr Sessa as a treating psychiatrist meant that she was particularly vulnerable, especially having made a number of attempts at self-harm, which were known to Dr Sessa.

44. The Tribunal considered that Dr Sessa's professional relationship with Patient A was recent enough that he felt the need to formally discharge her from his care. The Tribunal considered it clear that Dr Sessa arranged the appointment in

March with the intention of discharging Patient A so he could pursue a relationship with her. The Tribunal also noted that he had had email contact with Patient A, in a professional capacity as recently as October 2020, in which Patient A had disclosed a recent suicide attempt and her intention to seek in-patient treatment.

45. The Tribunal noted Dr Sessa's acceptance that Patient A was vulnerable throughout their interactions on Twitter and subsequent relationship and that there was a power imbalance between them.

46. The Tribunal determined that these breaches of The Guidance amounted to serious professional misconduct of a morally culpable kind and brought the reputation of the profession into disrepute. The Tribunal determined that Dr Sessa's actions breached all three limbs of the overarching objective.

47. Therefore, the Tribunal concluded that Dr Sessa's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct

Impairment

48. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Sessa's fitness to practise is currently impaired.

49. The Tribunal reminded itself that Dr Sessa was Patient A's treating psychiatrist and, by virtue of this relationship, Patient A was particularly vulnerable to him. Dr Sessa had admitted to discharging Patient A so that he could pursue a relationship with her, to engaging in a sexual relationship with her between July 2021 and February 2022, to the serious power imbalance between the pair and to the fact that Patient A was at all times vulnerable due to the nature of their professional relationship and her health conditions.

50. The Tribunal first considered Dame Janet Smith's test, as set out above. It considered that Dr Sessa's actions in engaging in a sexual relationship with a former patient put Patient A at risk of harm, had brought the profession into disrepute and had breached a fundamental tenet of the profession.

51. In determining the likelihood of any repetition of Dr Sessa's misconduct, the Tribunal turned to consider his level of insight and remediation.

52. The Tribunal reminded itself of Dr Sessa's answers in response to Mr Taylor's questioning about whether the process of remediation is lifelong. Dr Sessa responded by saying:

> *'Grief is lifelong process. Over three years I lost my mother, my father, my business and my partner. This grief will always be with me. This does not mean that I am not impaired, but in continuation of exploring these issues, it will always be with me. It doesn't mean that I am impaired in my work. In anybody's eyes, grief is a lifelong process.'*

53. The Tribunal was particularly concerned that Dr Sessa had not been able to identify why he had not, as a psychiatrist, picked up on the difficulties that Patient A was experiencing, nor why he had not questioned why she approached him anonymously. Dr Sessa described Patient A in March 2021 as *'high functioning, smart, intelligent, happy, well.'* The Tribunal recalled that Patient A made attempts on her life in May and July 2021, as well as serious overdoses four times in October and November 2020 all of which led to hospital admissions. It noted that Patient A was an in-patient for two weeks in December 2020 and was discharged because she arranged a private admission to The Priory Hospital for two weeks. The Tribunal considered it surprising that Dr Sessa never queried Patient A's mental state during their relationship, given his professional expertise and previous knowledge of her mental health.

54. The Tribunal considered that Dr Sessa's reflective statement was thorough and clearly set out that he accepted his mistakes but was concerned by some of the language that he used in his oral evidence. For example, his description of the March consultation as an *'irritating complication'* and his characterisation of his relationship with Patient A as a *'blip'* and *'one isolated incident.'* The Tribunal considered that this appeared to downplay the seriousness of Dr Sessa's actions. The Tribunal found there to be a discrepancy between Dr Sessa's written reflections and some of his oral evidence.

55. In light of this, the Tribunal determined that, although Dr Sessa has shown some degree of insight, it is still developing.

56. Turning to remediation, the Tribunal considered that the extent of Dr Sessa's remediation efforts were significant and there was little more that could be expected of him in terms of CPD and training courses. However, given its determination that his insight is still developing, the Tribunal could not say that Dr Sessa's remediation is yet complete. It considered that Dr Sessa did not seem to realise that he did not use his skills as a psychiatrist to check on Patient A's

wellbeing, despite her vulnerability. Instead, he saw what he wanted to enable his pursuit of a relationship with her.

57. The Tribunal considered that the impact of these events on Dr Sessa was clear and accepted that he understood it was a mistake to pursue a relationship with Patient A. The Tribunal considered that the risk of repetition is low.

58. The Tribunal therefore determined that Dr Sessa's fitness to practise is impaired on the grounds of the public interest. It accepted that the risk of repetition is low but he has not yet fully remediated his past actions, which risked patient safety, brought the profession into disrepute and breached a fundamental tenet of the profession.

59. The Tribunal considered that the public would be shocked if, in all the circumstances of the case, no finding of impairment were made. The Tribunal considered that fellow practitioners would find Dr Sessa's actions in pursuing a relationship with Patient A to be deplorable. It considered that Dr Sessa's past actions engaged all three limbs of the overarching objective.

60. The Tribunal has therefore determined that Dr Sessa's fitness to practise is impaired by reason of misconduct.